

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
W. R. GRACE & CO., et al.)	Bankruptcy Case No. 01-01139 (JKF)
)	(Jointly Administered)
Debtors.)	
		Re: Docket No. 21066

**DEBTORS' OBJECTIONS TO ANDERSON MEMORIAL'S
NOTICE OF DEPOSITION OF RICHARD FINKE**

Pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, made applicable in these proceedings by Rules 7026 and 7030 of the Federal Rules of Bankruptcy Procedure, Debtors W.R. Grace & Co., et al., (hereinafter "Grace") hereby object to Anderson Memorial Hospital's ("Anderson") notice of deposition of Richard Finke insofar as Anderson may seek testimony regarding information prepared in anticipation of litigation, information obtained by or on behalf of counsel for Grace in preparation for trial, information protected by the attorney/client privilege, information protected by the work product privilege, information protected by Federal Rule of Evidence 408, and/or information otherwise beyond the permissible scope of discovery as set forth in the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Federal Rules of Bankruptcy Procedure or this Court's rules.

Grace also expressly objects to Anderson's Notice of Deposition to the extent that it seeks testimony that would disclose communications in connection with negotiations of a plan of reorganization and/or draft plan documents. Numerous bankruptcy courts have prohibited discovery into and the disclosure of such information. *See In re Federal-Mogul Global, Inc.*, Case No. 01-10578 (JKF) (Bankr. D. Del. Feb. 26, 2007) (Hr'g Tr. at 31) (finding that draft plan documents are not properly discoverable); *In re Pittsburgh Corning Corp.*, Case No. 00-22876

(JKF) (Bankr. W.D. Pa. Feb. 19, 2004) (Hr'g Tr. at 64-66) (finding that drafts of plan documents are not discoverable); *In re Combustion Eng'g*, Case No. 03-10495 (JKF) (Bankr. D. Del. May 2, 2003) (Hr'g Tr. at 301) (observing that "drafts generally are not relevant to anything"); *In re Babcock & Wilcox Co.*, No. 00-10992 (JAB) (Bankr. E.D. La. Aug. 20, 2003) (Hr'g Tr. 84) (denying insurers' motion to compel discovery on draft plan of reorganization documents and confidential plan of reorganization negotiations); *In re ACandS, Inc.*, No. 02-12687 (RJN) (Bankr. D. Del. Sept. 30, 2003) (Hr'g Tr. at 42-45) (denying discovery into plan negotiations on the grounds that such discovery is irrelevant to the issue of good faith in proposing the plan); *In re Eagle-Picher Indus.*, 169 B.R. 130, 134 (Bankr. S.D. Ohio 1994) (finding that creditors were not entitled to drafts of proposed plans of reorganization).

Grace also expressly objects to Anderson's Notice of Deposition to the extent that it seeks testimony that is irrelevant to Plan confirmation issues and not reasonably calculated to lead to the discovery of admissible evidence with respect to Plan confirmation issues.

Grace expressly reserves all claims of privilege. In particular, any testimony by Mr. Finke about potentially privileged or otherwise protected information shall not serve as a waiver of Grace's right to assert privilege or seek a protective order regarding that information in this or other proceedings.

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Subject to and without waiving any of its objections, as agreed by counsel for Grace and counsel for Anderson, Grace will make Mr. Finke available for deposition on Monday, March 30, 2009 at the offices of Anderson's counsel Loizides, P.A., 1225 King Street, Suite 800, Wilmington, Delaware, commencing at 9:30 AM eastern time.

Dated: March 27, 2009

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